



# California Fair Political Practices Commission

November 17, 1986

Kim Mueller  
3375 62nd Street  
Sacramento, CA 95820

Re: Your Request for Advice  
Our File No. A-86-296

Dear Ms. Mueller:

You have written requesting advice regarding your duties as a member of the Sacramento City Toxics Commission ("Toxics Commission") under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

The Toxics Commission is reviewing a proposed ordinance which would place a moratorium on specified uses of plastic pipe. The proposed ordinance is sponsored by a coalition of local organizations, including Sacramento Area Fire Fighters, Local 522. You have asked whether you are prohibited from participating in the Toxics Commission's decision by virtue of the fact that you are employed by the Federated Fire Fighters of California (FFFC), a statewide labor organization which receives dues from members of Sacramento Area Fire Fighters, Local 522.

## CONCLUSION

You are not prohibited from participating in the Toxic Commission's decision regarding the proposed ordinance.

## FACTS

The Toxics Commission has been asked by the Sacramento City Council to review a proposed ordinance which would place a moratorium on specified uses of plastic pipe. As part of its review, the Toxics Commission is holding a series of public

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<sup>1/</sup> Government Code Section 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

hearings and taking testimony from interested state and local agencies and from parties in support and in opposition to the proposed ordinance. Following these hearings, the Toxics Commission will submit its recommendations to the City Council which will then act on the proposal.

The proposed ordinance is sponsored by a coalition of local organizations. The coalition includes Sacramento Area Fire Fighters, Local 522 (SAFF). SAFF is a labor organization representing approximately 770 firefighters in Sacramento County.

SAFF belongs to the Federated Fire Fighters of California (FFFC), which is a statewide, nonprofit labor organization with approximately 17,000 members. SAFF contributes monthly dues of \$2.88 per member to FFFC. SAFF does not have a role in determining the salary and benefits paid to you by FFFC.

You are employed by FFFC as the organization's Health and Safety Director. Your job involves providing technical assistance and educational services to the FFFC membership. You assist members in interpreting existing state laws and regulations. When applicable, you advise them that administrative enforcement mechanisms are available. You write and edit a bimonthly newsletter on firefighter health and safety matters. You also arrange for direct education in the form of day-long seminars and in-service training.

FFFC has a full-time, registered legislative advocate who has complete responsibility for representing the membership before the Legislature and state agencies. Within FFFC, this advocate serves a separate function from you. You occasionally provide the advocate with technical information on health and safety issues, but you do not advocate on behalf of the organization. The advocate will not be appearing before the Toxics Commission to testify on the proposed plastic pipe moratorium. The Executive Board of FFFC has not taken and does not plan to take a position on the proposed plastic pipe moratorium.

FFFC has received monies to develop scientific test protocols for measuring the combustion toxicity of plastic pipe materials. These monies have come from the State Fire Marshal and a private company involved in the manufacture of steel pipe. The studies necessary to develop protocols have not been completed, and no conclusions regarding the toxicity of plastic pipe have been reached. While you did provide technical assistance within the organization when the possibility of conducting tests was first discussed, the project has been contracted out to experts in the field. You are not involved

in the project's implementation, and your salary is not affected by the funding received.

#### ANALYSIS

Section 87100 prohibits a public official<sup>2/</sup> from making, participating in, or attempting to influence any governmental decision in which she knows or has reason to know she has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision would have a material financial effect, distinguishable from the effect on the public generally, on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received

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<sup>2/</sup> The term "public official" includes every "member" of a state or local governmental agency. (Section 82048.) Subsection (a)(1) of Regulation 18700 further defines "member" as follows:

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

In the present situation, we do not have sufficient facts to determine whether members of the Toxics Commission are "members" within the meaning of the Act. However, since we have concluded on other grounds that you are not disqualified from participating in the Toxics Commission's decision, it is not necessary to make this determination.

by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(c).

FFFC provides you with income of \$250 or more per year. Accordingly, you may not participate in any decision which will have a reasonably foreseeable material financial effect on FFFC.

In Regulation 18702, the Commission has established guidelines for determining when a decision will have a material financial effect upon an official's interest. Regulation 18702(b)(3)(B) provides that in the case of a source of income of \$250 or more, an official must disqualify herself if "there is a nexus between the governmental decision and the purpose for which the official receives income...." We have interpreted this to mean that you may not accomplish as an official what you have been paid to do as an employee or agent advocate. See, Advice Letter to Linda Best, No. A-81-032; Advice Letter to Jeffrey Gunther, No. A-82-055; Advice Letter to Janet Cornelius, No. A-82-104; and Advice Letter to Ann Freers, No. A-86-281 (copies enclosed).

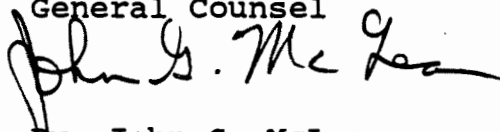
In the present situation, your job does not appear to include the duty of advocating limitations on the use of plastic pipe and, in any event, FFFC has not taken any position in support of or opposition to use of plastic pipe as specified in the proposed ordinance. Therefore, there is no nexus between the governmental decision to be made by the Toxics Commission and the purpose for which you receive income from FFFC.

While SAFF is one of the sponsors of the proposed ordinance, SAFF members constitute less than 5% of FFFC's membership. In such situations, we have treated organizations as separate from their members. See, Advice Letter to David Nawi, No. A-84-013 (copy enclosed). Therefore, SAFF is not considered to be a source of income to you. We conclude, therefore, that you may participate in the Toxics Commission's decision regarding the proposed ordinance.

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: John G. McLean  
Counsel, Legal Division